

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Cynthia Ortiz	Team: Team # 4	CCRB Case #: 200715167	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 10/05/2007 5:48 PM	Location of Incident: Corner of 161st Street and River Avenue	Precinct: 44	18 Mo. SOL 4/5/2009	EO SOL 4/5/2009	
Date/Time CV Reported Wed, 10/17/2007 12:00 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Wed, 10/17/2007 12:00 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Megan Zarella	05850	942739	044 PCT
2. POM Jeffrey Heilig	07638	941886	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jeffrey Heilig	Abuse: PO Jeffrey Heilig stopped § 87(2)(b)	
B.POF Megan Zarella	Abuse: PO Megan Zarella stopped § 87(2)(b)	
C.POM Jeffrey Heilig	Force: PO Jeffrey Heilig used physical force against § 87(2)(b)	
D.POF Megan Zarella	Force: PO Megan Zarella used physical force against § 87(2)(b)	
E.POF Megan Zarella	Abuse: PO Megan Zarella damaged § 87(2)(b) s property.	
F.POF Megan Zarella	Discourtesy: PO Megan Zarella spoke rudely to § 87(2)(b)	
G.POM Jeffrey Heilig	Discourtesy: PO Jeffrey Heilig spoke rudely to § 87(2)(b)	

### Synopsis

On October 5, 2007 at approximately 5:48pm § 87(2)(b) was crossing the street at the corner of 161<sup>st</sup> Street and River Avenue in the Bronx when two uniformed officers, identified by this investigation as PO Jeffrey Heilig and PO Megan Zarella, came up behind him and began to kick him on his feet and hit him on his back (**Allegations A, B, C and D**). The officers both pushed him on his back, with their hands, against a wall, then put his hands behind his back and handcuffed him (**also Allegation C and D**). § 87(2)(b) at the time had his cell phone in his hand. PO Zarella pulled the cell phone out of his hand causing the antenna to break (**Allegation E**). PO Heilig called § 87(2)(b) an “Idiot” and he and PO Zarella both called him “Stupid” (**Allegations F and G**). § 87(2)(b) then was “thrown” into their police vehicle and taken to the 44<sup>th</sup> Precinct stationhouse (**also Allegation C and D**). While at the precinct stationhouse § 87(2)(b) was issued two summonses for § 87(2)(a) 160.50.

§ 87(2)(g)

### Summary of Complaint

§ 87(2)(b) was interviewed at the CCRB, as a walk-in, on October 17, 2007 (encl. 7a-c). His statement is summarized below.

§ 87(2)(b) stated that on October 5, 2007 at approximately 5:48pm he was crossing the street at the corner of 161<sup>st</sup> Street and River Avenue in the Bronx. He was crossing during a green light which indicated that it was the pedestrians turn to cross the street, at the same time as an unidentified Asian woman was crossing the street. He was almost across the street when two uniformed officers came up behind him. PO Jeffrey Heilig and PO Megan Zarella (whom were both identified by the summonses issued to § 87(2)(b)) began to kick him on his feet and hit him on his back. The officers both pushed him, on his back with their hands, against a wall, then put his hands behind his back and handcuffed him. § 87(2)(b) did not receive any injuries. § 87(2)(b) at the time had his cell phone in his hand. PO Zarella pulled the cell phone out of his hand causing the antenna to break § 87(2)(b) showed the undersigned the damage to his phone during the interview- the antenna area of the phone had a crack however it appeared to be in working order as he replied to a phone call during the interview). § 87(2)(b) said to PO Zarella that she had broken his cell phone and she replied, “I don’t care.” § 87(2)(b) asked the officers what was going on and they continued to push him and hit him on his back. PO Heilig called § 87(2)(b) an “Idiot” as well and he and PO Zarella both called him “Stupid.” The Asian woman who had been crossing the street with § 87(2)(b) approached the officers to say something however they did not allow her to speak. § 87(2)(b) then was “thrown” into their police vehicle and taken to the 44<sup>th</sup> Precinct stationhouse. § 87(2)(b) stated that he did not resist “any arrest at all” because he had “done nothing wrong.” While at the precinct stationhouse PO Heilig handed § 87(2)(b) two summonses issued to him for § 87(2)(a) 160.50.

§ 87(2)(b) asked him, “What is this?” when he was handed the summonses. He just told § 87(2)(b) that he had to go to the address listed on the summonses to pay the fine. § 87(2)(b) asked, “Pay for what because you still have not told me why you are arresting me.” PO Heilig told § 87(2)(b) to leave the precinct several times. § 87(2)(b) then asked if he could speak to the officer in charge and PO Heilig replied that he was in charge and that if § 87(2)(b) did not leave the precinct he would arrest him again. § 87(2)(b) then asked “Arrest me for what?” He again asked why he was receiving the summonses and PO Heilig continued to tell him to leave the precinct. § 87(2)(b) stated that he asked the officers at one point to write their names down, and PO Heilig told him that their names would be located on the summonses. § 87(2)(b) then left the precinct. § 87(2)(b) provided a copy of both summonses. Summons § 87(2)(a) 160.50 (encl. ) was issued by PO Heilig (tax #941886) for § 87(2)(a) 160.50. Summons § 87(2)(a) 160.50 (encl. ) was issued by PO Zarella (tax #942739) for § 87(2)(a) 160.50.

### Results of Investigation

#### Witnesses not interviewed

§ 87(2)(b) stated that he crossed the street with an Asian woman who attempted to speak with PO Heilig and PO Zarella while they were handcuffing him. This woman therefore witnessed the incident, however § 87(2)(b) stated that he did not know her and was therefore unable to provide her name or contact information so she could be contacted for a statement. The incident occurred near the Yankee Stadium area where a major elevated subway station is also located. § 87(2)(g)

#### Officer Identification

§ 87(2)(b) was issued two summonses for § 87(2)(b). Summons § 87(2)(a) 160.50 had the name and tax identification number of PO Megan Zarella and summons #§ 87(2)(a) 160.50 had the name and tax identification number of PO Jeffrey Heilig. § 87(2)(b) described the male subject officer as a Caucasian male with a slim build, 5'6"-5'8" ft tall, in his late twenties to early thirties, with no facial hair or glasses. He described the female officer as a Caucasian female with a slim build, about 5'6"-5'8" ft tall, in her thirties with medium length hair. PO Heilig and PO Zarella both fit the descriptions provided by § 87(2)(b) and both confirmed that that they were the officers involved in the incident.

#### PO Jeffrey Heilig and PO Megan Zarella were interviewed at the CCRB on November 16, 2007 (encl. 10a-b and 13a-b).

On October 5, 2007 PO Jeffrey Heilig was working a 1500 x 2335 tour with PO Megan Zarella who was also working a 1500 x 2335 tour. PO Heilig and PO Zarella were in uniform in RMP#1736 and were assigned to the 44<sup>th</sup> Precinct patrol of sectors HJ. PO Heilig's memo book entry for the date of incident reads as follows: *1605-98 (Resuming patrol) 1700-See Rec (Recorder) notes 1723- 1 male stopped corner of E 161<sup>st</sup> Street and River Avenue 1725-1 under 1725- 84 at Precinct 1754-96 (summons) x 2 Released* (encl. 8a-b). PO Zarella's memo book entry for the date of incident reads as follows: *1616- 52(Dispute) 169/ Clay Avenue 90x(unfounded) 1723 - 1 under 161<sup>st</sup> Street and River Avenue 1754 - "C" summons issued to § 87(2)(b) § 87(2)(a) 160.50* (encl. 11a-c).

PO Heilig, the driver of the RMP, and PO Zarella were heading westbound on 161<sup>st</sup> Street approaching River Avenue in order to respond to a call for backup to an assault in progress. The lights and sirens were on in their vehicle. As they approached the intersection they noticed that a number of people began to hurry out of the intersection as they noticed the emergency vehicle heading their way. As the officers scanned the intersection they saw § 87(2)(b) make eye contact with them and start to walk into the intersection. § 87(2)(b) was amongst a cluster of people staring at the police vehicle but crossed the street alone. As § 87(2)(b) walked into the intersection right in front of the police vehicle he began to slow down significantly forcing PO Heilig come to a complete stop. § 87(2)(b) continued to stare at PO Heilig and PO Zarella when the vehicle had stopped and then continued walking very slowly on his way. PO Heilig then pulled over their RMP, and he and PO Zarella approached § 87(2)(b) and asked him why he stopped in the path of their police vehicle, which had lights and sirens going. § 87(2)(b) stated, "You're harassing me." The officers then asked if he had identification which he stated he had none. At this point they decided to place him under arrest to verify his identification back at the precinct. § 87(2)(b) was not compliant when the officers asked him to put his hands behind his back. He was flailing his arms, throwing them up in the air, therefore PO Heilig and PO Zarella both had to put § 87(2)(b)'s hands behind his back in order to handcuff him. At one point § 87(2)(b) had one of his arms handcuffed and he was flailing the other arm in order to prevent the other arm from being handcuffed. The officers eventually did get the handcuffs on him. Both officers stated that no one attempted to approach them as they were handcuffing § 87(2)(b). As they were putting § 87(2)(b) into the car he again began to "flail." PO Heilig had his hand around § 87(2)(b)'s bicep area in order to guide him to the car at the time when § 87(2)(b) flung his shoulder in order to stop PO Heilig from guiding him into the vehicle. § 87(2)(b) was then compliant and allowed PO Heilig to continue to guide him into the vehicle. PO Zarella did not assist in helping § 87(2)(b) to get into the vehicle. § 87(2)(b) was then brought down to the 44<sup>th</sup> Precinct stationhouse, he was given two summonses for § 87(2)(a) 160.50 and then he was released. § 87(2)(b) threatened to report

both officers the whole ride to the stationhouse. He asked for both officers information which they informed him would be on the summonses. PO Heilig and PO Zarella deny calling § 87(2)(b) “Stupid” or calling him an “Idiot.” They both state that the only force used against § 87(2)(b) was the minimum force needed to place his hands behind his back in order to handcuff him. They did not push him against a wall, kick him or hit him on his back. They also did not “throw” him into the police vehicle. Neither officer recalls if § 87(2)(b) had a cell phone in his hand or whether it was damaged during the incident.

#### NYPD Documents

##### *Roll Call*

The 44<sup>th</sup> Precinct roll call for tour 3 on October 5, 2007 indicates that PO Jeffrey Heilig and PO Megan Zarella were assigned to sector patrol of sectors HJ in marked patrol vehicle #1736 (encl.14a-m).

##### *Summonses*

§ 87(2)(b) was issued two summonses, #'s § 87(2)(b), § 87(2)(a) 160.50 for § 87(2)(a) 160.50 on October 5, 2007. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

##### Complainant's Criminal Conviction History

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

##### Complainant's CCRB History

This is the first CCRB complaint filed by § 87(2)(b) (encl.5).

##### Police Officer CCRB History

PO Jeffrey Heilig has not had any CCRB allegations substantiated against him (encl.3). He has been a member of the NYPD for one year. PO Megan Zarella does not have any previous record with the CCRB (encl.4). She has been a member of the NYPD for one year.

#### **Conclusions and Recommendations**

##### Undisputed and Disputed Facts

It is undisputed that on October 5, 2007 at approximately 5:48pm, PO Megan Zarella and PO Jeffrey Heilig stopped § 87(2)(b) handcuffed him and brought him to the 44<sup>th</sup> Precinct Stationhouse where they issued him two summonses for § 87(2)(a) 160.50, § 87(2)(g)

§ 87(2)(g)

##### Assessment of Evidence

§ 87(2)(g)

As a result of the incident § 87(2)(b) was issued two summonses for § 87(2)(a) 160.50. Both PO Heilig and PO Zarella stated that they had their vehicle lights flashing and were heading to a call when § 87(2)(b) slowly walked in front of their vehicle. This was confirmed by PO Zarella's memo book which indicates that they received a call for a dispute shortly before the incident occurred. They both stated that § 87(2)(b) made eye contact with them, indicating he noticed their vehicle, and he walked slow enough to force PO Heilig, the driver of the vehicle, to come to a complete stop. § 87(2)(g)

§ 87(2)(g)

PO Zarella and PO Heilig both stated that there were a crowd of people crossing the street but it was only § 87(2)(b) himself who did not yield to the vehicle and caused PO Heilig to stop. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) stated that PO Zarella and PO Heilig approached him from behind and began to kick him on his feet and hit him on his back. The officers both pushed him, on his back with their hands, against a wall, then put his hands behind his back and handcuffed him. When asked during his interview if he resisted while being handcuffed by the officers, § 87(2)(b) simply stated that he did not resist “any arrest at all” because he had “done nothing wrong.” PO Zarella and PO Heilig both stated that after telling § 87(2)(b) that they were placing him under arrest he began to move his arms in order to avoid being handcuffed. They also both stated that they both had to put his hands behind his back, due to his resistance, in order to handcuff him. § 87(2)(g)

§ 87(2)(b) stated that while attempting to handcuff him, PO Zarella grabbed his cell phone out of his hand, while trying to handcuff him, breaking the antenna off of his cell phone in the process. § 87(2)(b) showed the undersigned his cell phone, which was cracked in the antenna area and which was indeed missing its antenna. § 87(2)(g)

§ 87(2)(b) stated that PO Heilig called him an “Idiot” and that both officers called him “Stupid.” Both officers denied speaking discourteously to § 87(2)(b) § 87(2)(g)

**Allegations A - PO Jeffrey Heilig stopped § 87(2)(b)**

**Allegation B- PO Megan Zarella stopped § 87(2)(b)**

PO Jeffrey Heilig issued § 87(2)(b) a summons for violation of § 87(2)(a) 160.50

PO Megan Zarella issued § 87(2)(b) a summons for violation of § 87(2)(a) 160.50

§ 87(2)(g)

**Allegations C - PO Jeffrey Heilig used physical force against § 87(2)(b)**

**Allegation D- PO Megan Zarella used physical force against § 87(2)(b)**

§ 87(2)(g)

§ 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Patrol Guide section 203-11: *Use of Force* (encl. 2a-b), which grants officers  
“only that amount of force necessary to overcome resistance.” § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]

**Allegation E- PO Megan Zarella damaged § 87(2)(b) [REDACTED] s property.**

**Allegations F - PO Megan Zarella spoke rudely to § 87(2)(b) [REDACTED]**

**Allegation G - PO Heilig spoke rudely to § 87(2)(b) [REDACTED]**

§ 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: